

The PBM Sunshine and Accountability Act (H.R. 2816)

Enhancing Transparency to Enable More Cost-Efficient and Value-Based Prescription Coverage Choices

Pharmacy Benefit Managers (PBMs) are operating in ways that enrich themselves to the detriment of those who rely on their negotiating power and expertise, and are creating and profiting from misaligned incentives and raising clear conflicts of interest. This has gained the attention of states, Congress, and the Federal Trade Commission.

After nearly two decades of horizontal consolidation, the PBM industry has become increasingly dominated by a small number of large companies.

- The combined market share of the three largest PBMs has grown significantly, from 48 percent in 2010 to 80 percent in 2021.^{1,2}
- Today, just six companies control 96 percent of the PBM market.³

The largest PBMs wield significant sway over the marketplace, both by virtue of market share and relationships with other market participants including health plans, pharmacies, and other providers.

- Five of the six biggest PBMs are part of large, vertically integrated organizations. There is significant ownership overlap between PBMs, health insurers, specialty and mail-order pharmacies and provider organizations.⁴
- PBMs and their affiliates create coverage networks that direct patients to the pharmacies that they own, creating additional revenue streams rather than passing savings to their clients and patients for whom they are supposedly working.

Because they operate in increasingly complex ways, health plans, plan sponsors, and patients often do not know about the conflicts of interest that riddle PBM decision-making.

- When policymakers do get close to reigning in unfair practices, those complex arrangements allow PBMs to “shape-shift” into other entities to evade regulation (e.g., creating foreign-based rebate management organizations or group purchasing organizations).⁵

Congress can and should take steps to shine a brighter light on PBM practices, building on existing measures that require reporting of certain financial information.

There are currently two federal statutory provisions requiring PBMs to report information to the government. One provision exists as a payment rule to allow the Secretary of Health & Human Services (HHS) to pay correct Medicare reimbursement to a Part D prescription drug plan.⁶ The other provision requires high-level information such as total aggregate rebates and the amount passed through to a Part D sponsor or qualified health plan⁷ offered through an Affordable Care Act (ACA) Exchange (health insurance marketplace). **However, neither of these provisions requires public reporting, and these PBM reporting provisions do not require truly meaningful transparency on PBM conduct.**

Improved health system transparency requires a more detailed and granular approach for PBM reporting, in order for health plan participants, employers, providers and policy analysts to better gauge and assess the conduct of PBMs. This sort of transparency can help plans, government agencies, and patients

understand how rebates and fees are impacting costs on a plan-level basis, and provide them with necessary information to make more informed, cost-efficient and value-based PBM choices.

The PBM Sunshine and Accountability Act would amend current law to revamp the types of information required to be reported directly by PBMs on a plan-level basis, and would apply these reporting requirements to virtually all health insurance markets (Medicare Part D; ACA Exchanges; employer-sponsored commercial health insurance; and individual private health insurance). The new information PBMs must report includes:

1. Aggregate dollar amount of all rebates the PBM receives **from drug manufacturers**;
2. Aggregate amount of all **administrative fees that the PBM receives from drug manufacturers**;
3. Aggregate amount of all **administrative fees that the PBM receives from health insurers or plan sponsors**;
4. Aggregate dollar amount of all **rebates that the PBM receives but does not pass through**;
5. Aggregate dollar amount of **all administrative fees that the PBM receives but does not pass through**;
6. **Post adjudication payments that a PBM extracts from pharmacies**;
7. Aggregated **retained rebate percentage**; and
8. **Highest and lowest aggregate retained rebate percentage**.

To improve the ability of employers, patients, health policy researchers, and other stakeholders to gauge the effectiveness of their PBM, **these reporting requirements would be made public** by the Secretary of HHS at least once a year.

Ensuring appropriately robust PBM transparency will help employers, plans, patients, providers and policymakers understand how growing PBM fees impact total health costs.

More robust transparency provided by *the PBM Sunshine and Accountability Act* is needed to shine a light on the ways that PBMs shape-shift to avoid regulation and create new revenue streams, and to prevent those practices. For example, although current federal reporting requirements have been in place since the enactment of the Affordable Care Act, they have not prevented PBMs from evolving their compensation models in response to increased scrutiny of rebate retention.

¹ “Top 50 PBM Companies and Market Share by Annual Prescription Volume (Second Quarter 2010).” *Drug Benefit News*. April 16, 2010.

² Adam J. Fein. “[The Top Pharmacy Benefit Managers of 2021: The Big Get Even Bigger](#).” Drug Channels. April 5, 2022.

³ *Ibid*.

⁴ Hayden Consulting Group. [Understanding the PBM Compensation Model](#). December 22, 2021.

⁵ PBM Accountability Project. “[Understanding the Evolving Business Models and Revenues of Pharmacy Benefit Managers](#),” December 2021.

⁶ Social Security Act Sec. 1860D-15 (42 U.S.C. 1395w-115).

⁷ Social Security Act Sec. 1150A (42 U.S.C. 1320b-23).